

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #16	CCRB Case #: 201605169	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/12/2016 3:15 AM	Location of Incident: Gates Avenue and Stuyvesant Avenue	Precinct: 81	18 Mo. SOL 12/12/2017	EO SOL 12/12/2017	
Date/Time CV Reported Wed, 06/15/2016 9:27 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/15/2016 9:27 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Michael Miller	02951	921596	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Officers			081 PCT
2. POM Brian Hellberg	08253	944641	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA Michael Miller	Discourtesy: Sergeant Michael Miller spoke discourteously to an individual	
B.SSA Michael Miller	Force: Sergeant Michael Miller used physical force against § 87(2)(b)	
C.SSA Michael Miller	Force: Sergeant Michael Miller used physical force against § 87(2)(b)	
D.SSA Michael Miller	Force: Sergeant Michael Miller used physical force against § 87(2)(b)	
E.SSA Michael Miller	Discourtesy: Sergeant Michael Miller spoke discourteously to § 87(2)(b)	

Case Summary

This complaint was reported to the CCRB via the online website by § 87(2)(b) on June 15, 2016.

On June 12, 2016, at approximately 3:15 a.m., § 87(2)(b) walked with § 87(2)(b) to the Deli and Grill store, located at 829 Gates Avenue in Brooklyn. Sgt. Michael Miller told an unidentified individual to “shut the fuck up” (**Allegation A**). Sgt. Miller pushed § 87(2)(b) (**Allegation B**). § 87(2)(b) walked away from Sgt. Miller. Sgt. Miller took § 87(2)(b) to the ground and placed him in handcuffs (**Allegation C**). Sgt. Miller punched § 87(2)(b) in the face (**Allegation D**) and told him to “shut the fuck up” and “lay the fuck down” (**Allegation E**). § 87(2)(b) was arrested for § 87(2)(b) (Board Review 01). After being transported to the 81st Precinct stationhouse, § 87(2)(b) was transported to § 87(2)(b) (Board Review 02 and 03).

§ 87(2)(b) provided a video on his cell phone taken of the surveillance video from the Deli and Grill (Board Review 04-05). The footage provided by § 87(2)(b) can be found under Board Review 04 and the transcription of the footage under Board Review 05. The video depicts Sgt. Miller pushing § 87(2)(b) followed by § 87(2)(b) and § 87(2)(b) walking away and Sgt. Miller following them. Below is a copy of the footage provided by § 87(2)(b) captured using SnagIt.



201605169_20161026_1830_DM.mp4

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) was arrested as a result of this incident.
- § 87(2)(b), § 87(2)(c)
- § 87(2)(b) filed a notice of claim regarding this incident on § 87(2)(b) (Board Review 13). His claim alleges that an officer used excessive physical force against him to effectuate an arrest, and he is seeking \$3 million in compensation.

Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s first complaint filed with the CCRB. § 87(2)(b)
- Sgt. Miller has been a member of the NYPD for 18 years. Sgt. Miller has had 63 allegations against him spanning from 19 complaints. Sgt. Miller has nine previously substantiated allegations against him. Sgt. Miller has a total of 18 previous force allegations, and eight previous discourtesy allegations against him.

- In CCRB case number 200606390, allegations that Sgt. Miller struck § 87(2)(b) with an asp, struck § 87(2)(b) with a car, and used physical force were all substantiated and charges were recommended. The NYPD did not take disciplinary action.
- In CCRB case number 201015205, allegations that Sgt. Miller frisked and searched § 87(2)(b) were substantiated and charges were recommended. § 87(4-b), § 87(2)(g)
- § 87(2)(b) Sgt. Miller received instructions from the NYPD.
- In CCRB case number 201409442, an allegation that Sgt. Miller entered and searched a location was substantiated and charges were recommended. The NYPD disposition is still pending.
- In CCRB case number 201409442, allegations that Sgt. Miller stopped and frisked § 87(2)(b) were substantiated and charges were recommended. The NYPD disposition is still pending.
- In CCRB case number 201504855, an allegation that Sgt. Miller spoke discourteously to § 87(2)(b) was substantiated and formalized training was recommended. Sgt. Miller received command level instructions from the NYPD.

Potential Issues

- § 87(2)(b) was the only identified civilian witness, but he did not respond to contact attempts and did not provide a statement in regards to this incident.
- Efforts to obtain additional footage from Deli and Grill by the field team revealed that surveillance footage was only kept for 24 hours (Board Review 06).
- The victim of the first discourtesy allegation (**Allegation A**) could not be identified. § 87(2)(b) did not know the individual and they were not arrested or issued a summons.

Findings and Recommendations

Allegation A – Discourtesy: Sergeant Michael Miller spoke discourteously to

§ 87(2)(b) was interviewed at the CCRB on June 20, 2016 (Board Review 09). § 87(2)(b) alleged that an unidentified male individual yelled to officers, “Get off the block, suck my dick.” Sgt. Miller responded saying, “Shut the fuck up.” As mentioned above, § 87(2)(b) did not know the individual and he was not arrested or issued a summons. The individual could not be identified to provide a statement. § 87(2)(g)

Allegation B – Force: Sergeant Michael Miller used physical force against

It is undisputed that Sgt. Miller pushed § 87(2)(b) § 87(2)(b) (Board Review 09) stated that, after leaving a cookout near the intersection of Marcus Garvey Boulevard and Quincey Street in Brooklyn, § 87(2)(b) and § 87(2)(b) were standing at the 24 hour window of the Deli and Grill located at 829 Gates Avenue in Brooklyn. Sgt. Miller approached him and accused him of using profanity. In response, § 87(2)(b) said, “I didn’t say nothing. I didn’t say suck my dick,” and held his hands up at above shoulder level with his palms open. § 87(2)(b) had nothing in his hands. Sgt. Miller pushed

§ 87(2)(b) very hard, hitting his palms against § 87(2)(b)'s chest, causing § 87(2)(b) to fall backward against the entrance to the Deli and Grill.

Sgt. Miller was interviewed at the CCRB on September 8, 2016 (Board Review 10). Sgt. Miller said that § 87(2)(b) was walking east on Gates Avenue, through what Sgt. Miller was attempting to establish as a crime scene in regards to a firearms arrest he had just made. § 87(2)(b) was cursing and screaming. A few officers told § 87(2)(b) to "keep it moving." § 87(2)(b) stopped outside the Deli and Grill and continued to yell and curse for about 10 to 20 seconds. Sgt. Miller decided that § 87(2)(b) needed to be placed under arrest so that the officers could maintain the order of the crime scene. Sgt. Miller walked towards § 87(2)(b) and told him to "move along" at least twice. § 87(2)(b) responded, "Come over here, I'll stick my dick down your fucking throat, faggot." As Sgt. Miller walked towards § 87(2)(b) and got onto the sidewalk, § 87(2)(b) "shouldered around a guy" to move towards Sgt. Miller. Sgt. Miller put both his hands up to stop § 87(2)(b). Sgt. Miller told § 87(2)(b) that he was under arrest. Sgt. Miller pushed § 87(2)(b) by pushing his hands out to stop him from coming towards him.

PO Brian Hellberg was interviewed at the CCRB on September 16, 2016 (Board Review 11). PO Hellberg was in the driver's seat of his unmarked RMP when he saw Sgt. Miller and § 87(2)(b) in a "small scuffle." PO Hellberg said that he saw § 87(2)(b) stumble back and then run away. PO Hellberg assumed that Sgt. Miller and § 87(2)(b) made physical contact before § 87(2)(b) did this, but he did not see that.

The video provided by § 87(2)(b) from the Deli and Grill (Board Review 04-05) shows that § 87(2)(b) was standing still immediately before Sgt. Miller pushed him. § 87(2)(b) did not come towards Sgt. Miller. At 00:04 seconds, § 87(2)(b) is standing still with his hands at his sides and at 00:05 Sgt. Miller pushes § 87(2)(b).

In determining whether the use of force is reasonable, members of the service should consider: the nature and severity of the crime and circumstances; actions taken by the subject and the duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether or subject is actively resisting custody; whether the subject is attempting to evade arrest by flight, Patrol Guide 221-01, "Force Guidelines" (Board Review 12).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Sergeant Michael Miller used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) tried to walk away from Sgt. Miller. It is also undisputed that Sgt. Miller took § 87(2)(b) to the ground.

§ 87(2)(b) (Board Review 09) stated that, after Sgt. Miller pushed him, he fell back onto the entrance to the Deli and Grill. § 87(2)(b) caught § 87(2)(b) by the front of his shirt. § 87(2)(b) asked § 87(2)(b) if he was alright. § 87(2)(b) did not have time to respond because he was catching his breath. § 87(2)(b) and § 87(2)(b) tried to walk away towards Stuyvesant Avenue. § 87(2)(b) asked Sgt. Miller what he was doing and told him

that he was not allowed to do this. Sgt. Miller followed § 87(2)(b) and § 87(2)(b). When they reached the corner of Stuyvesant Avenue and Gates Avenue, about 20 feet away, Sgt. Miller came up behind § 87(2)(b), grabbed him around the torso and threw him to the ground, causing § 87(2)(b)'s head to slam against the ground. § 87(2)(b) believed he sustained a concussion as a result of the force used against him by Sgt. Miller, however he said he was not treated for a concussion at the hospital.

Sgt. Miller (Board Review 10) stated that, after he pushed § 87(2)(b), he told § 87(2)(b) that he was under arrest and to turn around. § 87(2)(b) turned around and ran away. Sgt. Miller chased § 87(2)(b) to the corner of Stuyvesant Avenue and Gates Avenue, about 30 feet. Sgt. Miller grabbed § 87(2)(b) from behind in a "bear hug" by putting both of his arms around § 87(2)(b)'s body and took him to the ground.

PO Hellberg (Board Review 11) stated that, after § 87(2)(b) stumbled back, he ran away down Gates Avenue. Sgt. Miller grabbed § 87(2)(b) from behind and tackled him at the corner of Gates Avenue and Stuyvesant Avenue.

The video provided by § 87(2)(b) from the Deli and Grill (Board Review 04-05) shows that, after Sgt. Miller pushed § 87(2)(b) and § 87(2)(b) walked away towards the corner of Gates Avenue and Stuyvesant Avenue. The video does not depict § 87(2)(b) being brought to the ground.

Medical records received from § 87(2)(b) (Board Review 02 and 03) did not note that § 87(2)(b) had a concussion, nor was he treated for one. § 87(2)(b) was transported to the hospital as an EDP and stated that he was having a panic attack. § 87(2)(b)'s chief complaint was that he was beaten up by the police. Medical personnel noted that § 87(2)(b) had abrasions to his forehead and face, but there was no evidence of facial trauma.

In determining whether the use of force is reasonable, members of the service should consider: the nature and severity of the crime and circumstances; actions taken by the subject and the duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether or subject is actively resisting custody; whether the subject is attempting to evade arrest by flight, Patrol Guide 221-01, "Force Guidelines" (Board Review 12).

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: Sergeant Michael Miller used physical force against § 87(2)(b)

It is disputed whether or not Sgt. Miller punched § 87(2)(b) in the face. § 87(2)(b) (Board Review 09) said that Sgt. Miller punched him on the left side of his face after taking him to the ground.

Sgt. Miller (Board Review 10) denied punching § 87(2)(b) in the face.

PO Hellberg (Board Review 11) was sitting across the street in his unmarked RMP when § 87(2)(b) was taken to the ground. Officers and civilians were obstructing PO Hellberg's view so he could not see what happened after Sgt. Miller took § 87(2)(b) to the ground.

As discussed above, no additional witnesses provided testimony and video footage did not capture § 87(2)(b) being taken to the ground and placed into handcuffs.

§ 87(2)(g)

Allegation E – Discourtesy: Sergeant Michael Miller spoke discourteously to § 87(2)(b)

It is disputed whether or not Sgt. Miller used profanity when speaking with § 87(2)(b). § 87(2)(b) (Board Review 09) said when Sgt. Miller punched him the left side of the face, Sgt. Miller told him to “shut the fuck up” and to “lay the fuck down.”

Sgt. Miller (Board Review 10) denied telling § 87(2)(b) to “shut the fuck up” or “lay the fuck down” at any point. Sgt. Miller denied using any profanity with § 87(2)(b). Sgt. Miller denied hearing any other officer using profanity with § 87(2)(b).

PO Hellberg (Board Review 11) denied hearing Sgt. Miller or any officer use any profanity with § 87(2)(b). PO Hellberg did not hear Sgt. Miller tell § 87(2)(b) to “shut the fuck up” or “lay the fuck down.”

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date